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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,056	06/20/2003	Sudhindra P. Herle	SAMS01-00275	6021

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EXAMINER
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YIGDALL, MICHAEL J

ART UNIT	PAPER NUMBER
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2192

MAIL DATE	DELIVERY MODE
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11/28/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/600,056	<b>Applicant(s)</b> HERLE ET AL.	
	<b>Examiner</b> Michael J. Yigdall	<b>Art Unit</b> 2192	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 10 November 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: 1,2,5-12,15-22,25-27 and 30.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

/Michael J. Yigdall/  
Examiner, Art Unit 2192

Continuation of 11.

Applicant's arguments have been fully considered but they are not persuasive. The examiner notes that Applicant's arguments are the same as those presented in Applicant's reply filed on June 16, 2008. Those arguments were addressed in the Office action mailed on September 8, 2008. Here, Applicant repeats the same arguments without pointing out any alleged errors in the examiner's reasoning. Accordingly, the examiner's response to the arguments is repeated below.

In the last Office action, the examiner noted that Imamatsu teaches a journal stored in non-volatile memory that includes status information. Here, Applicant contends that rather than a "journal comprising a plurality of entries," Imamatsu describes only a flag showing whether an installation is in progress or not in progress (remarks, pages 13-14).

However, the examiner respectfully submits that Applicant is mischaracterizing the teachings of the reference. The version management domain 42 (i.e., the "journal") of Imamatsu clearly comprises a "plurality of entries" (see FIG. 5). The sector-buffer-write completion flag to which Applicant refers (remarks, page 13) is merely one element of the version management domain 42. As noted in the last Office action, the status information stored in the version management domain 42 includes other parameters, such as a version-write completion flag and an update completion flag (see column 8, lines 24-32).

Applicant states that the claimed journal comprises both "first status information" and a "second parameter" that indicates a successful update, and concludes that Imamatsu does not teach or suggest a "plurality of entries" related to "status information associated with a re-programmed sector of non-volatile memory" (remarks, page 14).

As reasoned above, however, the journal of Imamatsu does comprise such a "plurality of entries." Each entry in the version management domain 42 is related to status information associated with a re-programmed sector of non-volatile memory (see column 7, line 50 to column 8, line 32). Furthermore, Imamatsu does describe a "second parameter" that indicates a successful update. Specifically, the update completion flag "indicates whether the update of the section to be updated is completed" (column 8, lines 29-31).

Nonetheless, the examiner appreciates that as claimed, the recited "second parameter" indicates, more precisely, "that said first target code from said first target sector was successfully stored in said save-area of said non-volatile memory." As set forth in the Office action, it is the Äijä reference that suggests the recited "save-area." A person having ordinary skill in the art could, with predictable results, incorporate into the version management domain 42 of Imamatsu a "second parameter" indicating that first target code from a first target sector was successfully stored in a save-area of the non-volatile memory.

First, Äijä describes storing an indication in non-volatile memory "that the upgrade procedure is finished" (see column 5, lines 25-27). The upgrade procedure of Äijä comprises storing first target code from a first target sector in a save-area of non-volatile memory (see step S22 in FIG. 4) prior to storing a first block of replacement code into the first target sector (see step S26 in FIG. 4), such as recited in the claims. Second, the sector-buffer-write completion flag described in Imamatsu "indicates whether the update-used software for partial updating has been written into the sector buffer" (column 8, lines 27-29), and therefore is analogous to the recited "second parameter."

The examiner respectfully reminds Applicant that the test for obviousness is not that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). The combined teachings of Imamatsu and Äijä would have suggested the claimed subject matter to those of ordinary skill in the art.

Applicant contends that even if the examiner's interpretation of Äijä is correct, "there is no teaching or suggestion in Äijä to show that a check is preformed to see if the update was successfully preformed" (remarks, pages 14-15).

However, the examiner respectfully points out that the claims do not positively recite performing any such checks. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). A reasonable interpretation is that in Äijä, the indication "that the upgrade procedure is finished" indicates that the upgrade procedure was successfully finished. Likewise, a reasonable interpretation of Imamatsu is that the version-write completion flag, sector-buffer-write completion flag and update completion flag indicate that each operation was successfully completed.

Applicant contends that the examiner "has not described in Imamatsu, Äijä, or the combination of Imamatsu and Äijä that a person of skill in the art would solve by adding the storage of such a plurality of entries to the combination of Imamatsu and Äijä," and further contends that instead, "the motivation to store such a plurality of entries comes from the Applicants' own specification" (remarks, page 15).

First, however, the version management domain 42 of Imamatsu already stores such a "plurality of entries" such as reasoned above. Second, the flags described in Imamatsu control the update decision process (see steps S13, S14 and S16 in FIG. 10). A "second parameter indicating that said first target code from said first target sector was successfully stored in said save-area of said non-volatile memory" would serve the same function. The examiner proposes that in terms of Imamatsu, such a parameter could be designated a "save-area-write completion flag." Äijä provides a reason for storing a save-area-write completion flag in the version management domain 42 of Imamatsu, namely that such a parameter would enable the wireless communication device of Imamatsu to determine whether the operation was or was not interrupted before completion (see column 5, lines 2-4).

Moreover, the examiner respectfully points out that a rigid application of the "teaching, suggestion, or motivation" test is not necessary to support a conclusion of obviousness. See *KSR International Co. v. Teleflex Inc.*, 550 U.S. \_\_\_, 82 USPQ2d 1385 (2007).

Accordingly, the examiner respectfully submits that the record establishes a prima facie case of obviousness. Thus, claims 1, 2, 5-12, 15-22, 25-27 and 30 stand finally rejected under 35 U.S.C. § 103(a) as set forth in the Office action mailed on September 8, 2008.